

Delaware Administrative Law Review Task Force
September 8, 2017
9:00 a.m.
222 Delaware Ave., Suite 1410, Wilmington, DE 19801

MEETING MINUTES

Task Force Members Present: Thomas McGonigle, Richard Forsten, Justice Seitz, State Solicitor A. Goldstein, M. Houghton, M. Dunkle, A. Quinlan, J. Adkins, D. Atkins, D. Mangler on behalf of Secretary of State Bullock

Absent: Danielle Gibbs, Representative L. Mitchell

Public Present: None

Call to Order

Thomas McGonigle called the meeting of the Delaware Administrative Law Review Task Force to order at 09:06 A.M.

Introduction of Members

The Committee members introduced themselves. T. McGonigle provided an overview of his background and the history of the interest in the objectives of the task force and introduced his guest, S. Herst; R. Forsten provided information regarding standard of review, case law and a recent news article of interest to the topic; D. Mangler, as appointed by the Secretary of State, has an interest in his Division's heavy reliance on the Administrative Procedures Act on a near daily basis; A. Goldstein, working with L. Lewis, represents the Department of Justice's interests as the State Solicitor; Justice Seitz represents the interests of the courts; M. Dunkle is a DNREC practicing lawyer with interest in land use and is the Kent/Sussex representative; M. Houghton has been practicing administrative law for over 20 years and is an advocate for uniform administrative law language; D. Atkins is representing CLASI and the interests of the vulnerable populations in Delaware; J. Adkins practices law with a firm that represents municipalities and landlord/tenant issues; A. Quinlan, state court administrator, has statistics on cases and will be helping coordinate details regarding administrative caseload in the courts. T. McGonigle addressed the roles that Representative Mitchell and D. Gibbs of the Governor's Office will play moving forward as well as the fact that there remain two vacancies on the task force yet to be filled.

Charge of the Task Force Pursuant to SCR 33

T. McGonigle reviewed the four main points of SCR 33 that are the targets for the work of the task force

1. Review and Revise the Delaware Administrative Procedures Act (APA) with a goal of having recommended legislation to the General Assembly for January 2018
2. Review jurisdictional issues among the Court System
3. Develop an Administrative Law Judge Implementation Plan and the practical implications for such a system
4. Review jurisdictional issues with respect to landlord/tenant and land use issues and develop recommendations

At the conclusion, the task force will generate a draft piece of legislation to amend the APA and possibly other statutes, with consideration for the impact on the Budget Act.

R. Forsten and M. Dunkle added that significant attention is still needed on the Court's standard of review.

Review Research on Model Administrative Procedures Acts

N. Barnett summarized recommendations of the Joint Study of the Delaware Courts regarding Administrative Law. That working group reviewed current form and substance of the APA, the 2010 Model State APA, and used that as the primary model to make substantive revisions while retaining the form and format of the current APA. A goal will be to accomplish uniformity across state and municipality agencies in Delaware. Included in the review for examples was Federal APA language, other states' APAs, Federal Rules of Civil Procedure, American Arbitration Rules, and Pennsylvania's recently revised APA. The impact on three specific agencies was reviewed – DNREC, DelDOT, and PSC. Also discussed was the research into standard of review – Federal APA, recent Supreme Court and Court of Chancery jurisprudence – including Corporate “reasonable” standard.

T. McGonigle explained the need to move to the practical effect of changes since so much work has been done previously on a draft bill. Implementation needs to be kept in mind moving forward.

The draft will be sent to task force members to solicit input with a future meeting to be devoted entirely to improving the draft.

Establish Process and Work Streams for Task Force

Members identified the types of questions to be answered regarding the current state.

1. Where are the Hearing Officers currently used?
 - a. Background – generic; full-time/part-time; fiscal models, etc.
 - b. Where do appeals go and where do they come from – number handled by various levels (Chancery; Superior, etc.)
2. What would it look like to go from our current model to an Administrative Law Judge system?
 - a. Structure – how many, where, etc.
3. Role and allocation of Attorney General Office resources?
 - a. How would an ALJ model change that landscape?
4. What is the Landlord/Tenant Case landscape?
 - a. How many?
 - b. Where do they go?
 - c. How many come from the county level?
 - i. Where do they go (Chancery/JP)?

Establish Subcommittees for Task Force

SCR 33 authorized two subcommittees. The focus of each subcommittee will initially be on all aspects of APA implementation and the substantive jurisdictional questions before circling back to review/revise the APA.

- State Regulatory (membership) – A. Goldstein (co-chair), T. McGonigle (co-chair), D. Gibbs, Rep. Mitchell, Chief Justice Seitz, D. Mangler, and M. Houghton
- Landlord Tenant/Land Use Subcommittee (membership) – R. Forsten (chair), M. Dunkle, D. Atkins, J. Adkins, and at least one of the currently vacant seat members

Upcoming Meetings

Next task force meeting scheduled for October 27, 2017, likely a morning meeting in Kent County with a location to be determined. Subcommittees to provide summary of work accomplished. November 15, 2017 was identified as a future meeting date in a New Castle County location.

Public Comment

None

There being no further business, the meeting adjourned at 10:30 A.M.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin P. May". The signature is written in a cursive, flowing style.